IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 202 of 1985

For Approval and Signature:

Noble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Noble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ATUL PRODUCTS LTD.

Appearance:

MR B. B. Naik with Mr RP BHATT for Petitioner

MR M J SHAH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 21/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following questions have been referred to us for our opinion in respect of the assessment year 1981-82 ;

(1) Whether medical benefit and house rent allowance cannot be considered as forming part of remuneration for the purpose of section 40 (c) of the Income tax Act, 1961 ?

(2) Whether the subsidy amount of Rs. 19.5 lacs received from the Government is not required to be deducted from the costs while working out the depreciation allowance?

(3) Whether the valuer of incomplete building and uninstalled machinery should be included as part of capital employed for the purpose of computing the relief under section 80J of the I T Act, 1961 ?

At the time of hearing of this Reference, Mr.Naik for the revenue and Mr. Shah for the assessee state that the aforesaid questions have been decided either by this Court or by the Supreme Court as under :

So far as question No. (1) is concerned, medical benefit has been held to be a part of remuneration in CIT vs. Ambica Mills Limited, 236 ITR 921 (Gujarat), and house rent has been held not to be a part of remuneration as per the decision of the Apex Court in CIT vs. Mafatlal Gagalbhai and Company, 219 ITR 644. Accordingly, we answer question No. (1) in favour of the revenue insofar as medical benefit is concerned and as far as house rent is concerned, we answer the question in favour of the assessee.

Coming to question No. (2), learned counsel state that the question is decided against the revenue in CIT vs. P.J.Chemicals Limited, 210 ITR 830 wherein the Supreme court has drawn a distinction between general subsidy given to the industry on one hand and financial assistance given for purchasing machinery on the other hand. In the first category of cases, the subsidy amount

is not required to be deducted from the cost while working out depreciation allowance; while the financial assistance specifically given for purchasing material is required to be deducted for working out depreciation allowance.

In the facts of this case, since subsidy was given by the Government under its resolution dated 22.12.1977 for establishing new industrial undertakings set up in backward area as conceded by the learned counsel for the revenue, the subsidy was general in nature. Both the Commissioner as well as the Tribunal held that subsidy is given for establishing new industrial undertaking in backward area as a new measure of subsidy and not as financial assistance specifically for purchasing machinery and plant.

In view of the above findings and the principle laid down by the Apex court in P.J. Chemicals Ltd. (supra), we answer question No. (2) in favour of the assessee and against the revenue.

So far as question No. (3) is concerned, learned counsel for the parties agreed that the said question is covered by the decision of the Apex Court in CIT vs. Alcock Ashdown Company Ltd., 224 ITR 353. We accordingly answer the question in favour of the assessee and against the revenue.

Reference is accordingly disposed of. There shall be no order as to costs.

(D. M. Dharmadhikari, C.J.)

(M. S. Shah, J.)

parekh